

APPEAL NO. 030026  
FILED FEBRUARY 21, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing (CCH) was held on November 6, 2002. The CCH involved disputed issues on the claimant's claim of a \_\_\_\_\_, injury and the claimant's claim of a repetitive trauma injury with a date of injury of (subsequent in injury). The hearing officer's decision addresses all of the disputed issues on both claims. The appellant (claimant) appeals the hearing officer's determinations that he did not sustain a compensable injury in the form of an occupational disease with a date of injury of (subsequent in injury), and that the claimed injury of (subsequent in injury), does not include the diagnosed annular tear and posterior right paramedian disc protrusion at L5-S1. The respondent (carrier) requests that we affirm the hearing officer's decision. There is no appeal of the hearing officer's determinations that the claimant sustained a compensable injury on \_\_\_\_\_; that the claimant's compensable injury of \_\_\_\_\_, includes his diagnosed annular tear and small posterior right paramedian disc protrusion at L5-S1; that the carrier is not relieved of liability for the \_\_\_\_\_, injury under Sections 409.002 or 409.004; that the carrier's second notice of refused or disputed claim filed on October 8, 2002, was not based on newly discovered evidence that could not reasonably have been discovered earlier; and that, had the claimed repetitive trauma injury with a date of injury of (subsequent in injury), been compensable, the carrier would not have been relieved of liability under Section 409.002. The hearing officer's determinations on the disputed issues that were not appealed have become final under Section 410.169.

DECISION

Affirmed.

The claimant claimed that he sustained a repetitive trauma injury to his back as the result of performing his work activities for the employer. Section 401.011(34) provides that an occupational disease includes a repetitive trauma injury, which is defined in Section 401.011(36) as "damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment." With regard to the appealed issues, the claimant had the burden to prove that he sustained a repetitive trauma injury and that such injury extended to include the annular tear and disc protrusion at L5-S1. Conflicting evidence was presented at the CCH on the appealed issues. The hearing officer found that the claimant did not injure his low back due to repetitive and traumatic lifting at work. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's determinations on the appealed issues are supported by sufficient evidence and are not so against the great

weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN MOUNTAIN  
ACE USA  
6600 E. CAMPUS CIRCLE DRIVE, SUITE 200  
IRVING, TEXAS 75063.**

---

Robert W. Potts  
Appeals Judge

CONCUR:

---

Terri Kay Oliver  
Appeals Judge

---

Edward Vilano  
Appeals Judge